IN THE MISSOURI SUPREME COURT

Supreme Court No. SC 90205

DONALD L. BRYANT, JR.,

Appellant,

vs.

SMITH INTERIOR DESIGN GROUP, INC. and WILLIAM KOPP,

Respondents.

ON TRANSFER FROM THE MISSOURI COURT OF APPEALS

FOR THE EASTERN DISTRICT

APPELLANT'S SUBSTITUTE BRIEF

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JURISDICTIONAL STATEMENT

This is an appeal from the April 14, 2009 decision of the Missouri Court of Appeals for the Eastern District affirming the August 11, 2008 judgment of the Circuit Court of St. Louis County, which had dismissed Appellant Donald L. Bryant, Jr.'s amended petition for lack of personal jurisdiction over Respondents.[1] On April 28, 2009, Mr. Bryant filed an application for transfer with the court of appeals, which was denied on June 2, 2009. Pursuant to Rule 83.04, Mr. Bryant filed an application for transfer with this Court on June 15, 2009. After receiving Respondents' suggestions in opposition, this Court granted Mr. Bryant's application for transfer on September 1, 2009.

This Court has jurisdiction under Article V, Section 10 of the Missouri Constitution and Supreme Court Rules 83.04 and 83.09. Appellant seeks reversal of the court of appeals' decision affirming dismissal of the amended petition.

[1] The author of the opinion was the Honorable Kurt S. Odenwald, J., with the Honorable Nannette A. Baker, C.J., and the Honorable Lawrence E. Mooney, J., concurring.

STATEMENT OF FACTS

Basis of the Lawsuit

Respondents are a Florida corporation (Smith Interior Design Group, Inc.) and a Florida resident (William Kopp), who have performed interior design services for Mr. Bryant and other Missouri residents in the state of Missouri as well as in other states. (L.F. 62-64, at ¶ 2-3, 5, 7-10). Mr. Bryant is a Missouri resident who owns property in Missouri, New York and other states. (L.F. 62, 64, at ¶¶ 1, 10). This lawsuit arises from Respondents' efforts to defraud Mr. Bryant – through a series of false and misleading communications that occurred in, or were sent into, the state of Missouri – regarding the commissions they were charging Mr. Bryant in connection with interior design services they were providing at his New York property.

Proceedings Below

On March 21, 2008, Mr. Bryant filed this lawsuit in St. Louis County Circuit Court. The petition, which was later amended, alleges five counts concerning the interior design services performed by Respondents for Mr. Bryant: (1) fraudulent misrepresentation; (2) fraudulent omission; (3) negligent misrepresentation; (4) unjust enrichment; and (5) violation of the Missouri Consumer Protection Act. (L.F. 70-74). These claims arise out of Respondents' initial meeting with Mr. Bryant in Missouri and out of fraudulent and/or negligent documents and invoices sent by Respondents to Mr. Bryant in Missouri.

The amended petition alleges the following facts concerning Respondents' contacts with Missouri:

- Respondents travelled into the state of Missouri to meet with Mr. Bryant to discuss their services, and to take the initial steps toward providing interior design services for Mr. Bryant in his New York co-op. (L.F. 63, at ¶ 9).
- Respondents made material misrepresentations in, and/or omitted material information from, numerous documents sent to Mr. Bryant in St. Louis in connection with their fees and commissions in the decorating of the New York co-op and the costs for the furniture and other household items. (L.F. 64-68, 70, 72, at ¶¶ 12-13, 15-18, 22, 33, and 44).
- In Respondents' interactions with Mr. Bryant – including their meeting with Mr. Bryant in Missouri, and their phone conversations and e-mail communications with Mr. Bryant in Missouri – Respondents concealed the true amount of their commissions and fees. (L.F. 63, 67, 71, at ¶¶ 9, 19, 39).
- Respondents were referred to Mr. Bryant by Respondents' Missouri clientele, and Mr. Bryant understands and believes they continue to provide interior design services for at least one Missouri clientele. (L.F. 63-64, at ¶¶ 8, 10).

On August 1, 2008, Defendants filed a motion to dismiss the amended petition for lack of personal jurisdiction.[2] On August 11, 2008, the circuit court granted Defendants' motion to dismiss (hereinafter, "Judgment"). (L.F. 232). On August 19, 2008, Mr. Bryant moved the circuit court to reconsider its Judgment, but the circuit court denied the motion. (L.F. 251).

Mr. Bryant appealed the circuit court's order to the Missouri Court of Appeals for the Eastern District. On April 14, 2009, the court of appeals entered an Order affirming the circuit court's dismissal of Mr. Bryant's claims. In its Opinion, the court of appeals correctly explained: "The issue before us is whether Appellant has met his burden of pleading the commission of acts contemplated by Missouri's long-arm statute, and the presence of sufficient minimum contacts with Missouri to justify the exercise of personal jurisdiction." Op. at 5. (A-6).

The court acknowledged that Mr. Bryant "claim[ed] that allegations of Respondents' travel to Missouri, as well as Respondents' mailing of documents and correspondence into Missouri, sufficiently plead and demonstrate the minimum contacts necessary to satisfy the requirements of due process." Op. at 5-6. (A-6-7). Nevertheless, the court affirmed the decision of the circuit court, stating: "Our examination of the

[2] The motion to dismiss the *amended* petition followed Respondents' earlier motion to dismiss the petition, which the Court denied in a ruling that also granted Mr. Bryant leave to file his amended petition. (L.F. 154).

Amended Petition leads us to conclude that Appellant has failed to demonstrate the necessary minimum contacts required to make a prima facie showing that Respondents are subject to personal jurisdiction in Missouri." Op. at 6. (A-7). Finding its resolution of the federal due process issue "dispositive of this appeal," the court declined to address the Missouri long-arm statute. Id.

POINTS RELIED ON

I.

The Court of Appeals Erred in Holding That the Federal Due Process Clause Prohibits the Exercise of Personal Jurisdiction Over Respondents, Because Directing False and Misleading Communications into the Forum, Which Respondents Are Alleged to Have Done, Satisfies the Federal Due Process "Minimum Contacts" Requirement.

International Shoe Co. v. Washington, 326 U.S. 310 (1945)

Burger King Corp. v. Rudzewicz, 471 U.S. 462 (1985)

Oriental Trading Co. v. Firetti, 236 F.3d 938 (8th Cir. 2001)

FMC Corp. v. Varanos, 892 F.2d 1308 (7th Cir. 1990)

II.

The Court of Appeals Erred in Affirming Dismissal for Lack of Personal Jurisdiction, Because the Amended Petition Also Alleges Facts Sufficient to Support an Exercise of Jurisdiction Under the Missouri Long-Arm Statute.

Longshore v. Norville, 93 S.W.3d 746 (Mo.Ct.App. E.D. 2002)

Watlow Electric Mfg. Co. v. Sam Dick Indus., Inc., 734 S.W.2d 295 (Mo.Ct.App. E.D. 1987)

ARGUMENT

Introduction

The court of appeals' Opinion raises substantial legal issues regarding the federal due process "minimum contacts" required to support an exercise of jurisdiction over an out-of-state defendant' in Missouri. The Opinion creates a conflict between the Missouri courts and the United States Courts of Appeal for the First, Fifth, Seventh, Eighth, and Ninth Circuits. While these federal courts have held that allegations that a defendant's purposefully directed fraudulent communications into the forum state *are sufficient* to satisfy federal due process, the court of appeals held that they *are not*. Thus, while the federal courts interpret federal law in a manner that would permit litigation of cases like Mr. Bryant's in the Missouri courts, the court of appeals found that federal law stands as a jurisdictional bar to the litigation of such claims here.

This Court should reverse the court of appeals and bring Missouri courts in line with the numerous federal circuits that have determined that directing fraudulent communications into the forum is sufficient to satisfy the federal due process "minimum contacts" requirement. While decisions of the lower federal courts are not binding on the Missouri courts, "[i]n some circumstances it may be appropriate for a state court to defer to long established and widely accepted federal court interpretations of federal [law]." Wimberly v. Labor and Indus. Relations Comm'n of Missouri, 688 S.W.2d 344, 347-48 (Mo. banc 1985). "The courts of this state should 'look respectfully to such opinions for such aid and guidance as may be found therein.'" Id. (citation omitted).

This Court should also reverse the court of appeals' Opinion because the Missouri long-arm-statute confers jurisdiction over Respondents. While the court of appeals declined to review the issue, the facts alleged in the amended petition demonstrate that Respondents transacted business within Missouri and committed a tortious act within Missouri, each of which is independently sufficient to confer jurisdiction under the Missouri long-arm statute.

Standard of Review

The standard of review is *de novo*. Where, as here, the defendant fails to offer any evidentiary support for its claim of lack of jurisdiction, "the sufficiency of the evidence to make a prima facie showing that the trial court may exercise personal jurisdiction is a question of law, . . .which [the appellate court] review[s] independently on appeal." Wilson Tool & Die, Inc. v. TBDN-Tennessee Co., 237 S.W.3d 611, 615 (Mo.Ct.App. E.D. 2007) (quoting Stavrides v. Zerjav, 848 S.W.2d 523, 527 (Mo.Ct.App. E.D. 1993)).

Mr. Bryant was only required to make a *prima facie* case of jurisdiction. See Johnson Heater Corp. v. Deppe, 86 S.W.3d 114, 119 (Mo.Ct.App. E.D. 2002). In examining the *prima facie* showing, the circuit court was to view the allegations of the amended petition in the light most favorable to Mr. Bryant and resolve all factual conflicts in his favor. See Moore v. Christian Fid. Life Ins. Co., 687 S.W.2d 210, 211 (Mo.Ct.App. W.D. 1984) ("the allegations of the petition are given an intendment most favorable to the existence of the jurisdictional fact"); Romak USA, Inc. v. Rich, 384 F.3d

979, 983-84 (8th Cir. 2004) (courts "must view the evidence in the light most favorable to [plaintiff] and resolve factual conflicts in its favor").

In assessing whether a plaintiff has made a *prima facie* showing of jurisdiction, the Court engages in a two-step analysis. Conway v. Royalite Plastics, Ltd., 12 S.W.3d 314, 318 (Mo. 2000). The Court must first determine whether the Respondents committed one of the acts enumerated in the state's long-arm statute. Id.; see also Lakin v. Prudential Securities, Inc., 348 F.3d 704, 706-07 (8th Cir. 2003). The Court must then consider whether the exercise of personal jurisdiction over Defendants violates the Due Process Clause of the Fourteenth Amendment. Id. When determining the issue of personal jurisdiction, the Court should not consider the merits of the underlying action. Longshore v. Norville, 93 S.W.3d 746, 751 (Mo.Ct.App. E.D. 2002) (citations omitted).

I. The Court of Appeals Erred in Holding That the Federal Due Process Clause Prohibits the Exercise of Personal Jurisdiction Over Respondents, Because Directing False and Misleading Communications into the Forum, Which Respondents Are Alleged to Have Done, Satisfies the Federal Due Process "Minimum Contacts" Requirement.

The court of appeals held that the due process clause of the Fourteenth Amendment to the U.S. Constitution prevents the Missouri courts from exercising jurisdiction over the out-of-state Defendants-Respondents in this action, even though they are alleged to have purposefully directed fraudulent communications into the state. Op. at 6. To permit the exercise of jurisdiction, due process requires only that an out-of-state

defendant "have certain *minimum contacts* with [the forum] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945) (emphasis added) (citations omitted).

While the Due Process Clause requires that "individuals have 'fair warning that a particular activity may subject [them] to the jurisdiction of a foreign sovereign,'" the United States Supreme Court has explained that "this 'fair warning' requirement is satisfied if the defendant has 'purposefully directed' his activities at residents of the forum, … and the litigation results from alleged injuries that 'arise out of or relate to' those activities." Burger King Corp. v. Rudzewicz, 471 U.S. 462, 471-72 (1985) (internal citations omitted). Forum courts may exercise personal jurisdiction in these circumstances because, "where individuals 'purposefully derive benefit' from their interstate activities, … it may well be unfair to allow them to escape having to account in other States for consequences that arise proximately from such activities." Id. at 473-74 (internal citations omitted).

Applying these standards, the United States Courts of Appeal for the First, Fifth, Seventh, Eighth, Ninth, and Tenth Circuits have expressly held that allegations that a defendant purposefully directed fraudulent communications at a resident of the forum state is sufficient to satisfy the "minimum contacts" requirement of the due process clause. See, e.g., Murphy v. Erwin-Wasey, Inc., 460 F.2d 661, 664 (1st Cir. 1972) ("there can be no constitutional objection to Massachusetts asserting jurisdiction over the

out-of-state sender of a fraudulent misrepresentation, for such a sender has thereby 'purposefully avail[ed] itself of the privilege of conducting activities within the forum State…"); Lewis v. Fresne, 252 F.3d 352, 358-59 (5th Cir. 2001) ("[w]hen the actual content of communications with a forum gives rise to intentional tort causes of action, this alone constitutes purposeful availment."); FMC Corp. v. Varonos, 892 F.2d 1308, 1314 (7th Cir. 1990) ("We agree with FMC that because Varonos sent telexes and telecopied reports that she knew contained material misrepresentations to FMC in Illinois, she can be said to have purposefully availed herself of conducting activities within Illinois."); Oriental Trading Co. v. Firetti, 236 F.3d 938, 943 (8th Cir. 2001) ("By purposefully directing their fraudulent communications at residents of Nebraska, the defendants should have realized that the brunt of the harm would be felt there, … and they should have reasonably anticipated being haled into court there. The district court had personal jurisdiction over Firetti and Ran.") (internal citations omitted); Metropolitan Life Ins. Co. v. Neaves, 912 F.2d 1062, 1065 (9th Cir. 1990) (finding jurisdiction based on allegations of "mailing the fraudulent information," because "[w]hen Gambrell addressed the envelop to Metropolitan, she was purposefully defrauding Neaves in California"); Wegerer v. First Commodity Corp. of Boston, 744 F.2d 719, 727-728 (10th Cir. 1984) (finding jurisdiction based on allegations of mailing three documents to plaintiff in forum that perpetrated fraud and deceit in inducement to contract).[3]

[3] See also Tannenbaum v. Brink, 119 F.Supp.2d 505, 510 (E.D. Pa. 2000) ("In the

While this Court has not yet considered the issue, other state courts have followed the lead of the federal courts in holding that the act of a non-resident defendant purposefully directing fraudulent communications into the forum is sufficient to satisfy the minimum contacts requirement and permit an exercise of jurisdiction over the defendant. See, e.g., Lebel v. Everglades Marina, Inc., 558 A.2d 1252, 1256 (N.J. 1989) ("Where a defendant knowingly sends into a state a false statement, intending that it should then be relied upon to the injury of a resident of that state, he has, for jurisdictional purposes acted within that state.") (citing Vishay Intertechnology, Inc. v. Delta Int'l Corp., 696 F.2d 1062, 1066 (4th Cir. 1982) (quoting Murphy v. Erwin-Wasey, Inc., 460 F.2d 661, 664 (1st Cir. 1972) (citations omitted)); Burtner v. Burnham, 430 N.E.2d 1233, 1236 (Mass. App. 1982); Schocket v. Classic Auto Sales, Inc., 817 P.2d 561, 563-64 (Colo. App. 1991) ("it would not offend due process principles to subject

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instant case, Plaintiffs argue that the fraudulent minutes mailed by Defendant to Tannenbaum in Pennsylvania constituted a 'fraud based tort,' which is sufficient to establish minimum contacts. It is well-established that directing tortious activity at a forum can be enough to establish minimum contacts for due process purposes. … Because much of this litigation centers on the allegedly fraudulent 1999 Copro meeting minutes, and the role they played in propagating the larger fraud against Plaintiffs, the mailing of those minutes to Tannenbaum is sufficient to allow exercise of specific jurisdiction over Defendants.") (citations omitted).

defendants to suit in this state" where plaintiff "alleged that defendants made deliberate, direct and indirect fraudulent misrepresentations for the purpose of inducing him to travel to Nebraska and enter into a contract for the purchase of a vehicle"); Shrout v. Thorsen, 470 So.2d 1222, 1224-26 (Ala. 1985); Fletcher Jones W. Shara, Ltd., LLC v. Rotta, 919 So. 2d 685, 687 (Fla. Dist. Ct. App. 3d Dist. 2006); Loeffelbein v. Milberg Weiss Bershad Hynes & Lerach LLP, 106 P.3d 74, 81 (Kan. Ct. App. 2005).

The court of appeals was correct in holding that directing communications into the state, without more, is insufficient to satisfy due process. The court erred, however, in failing to recognize that, where those communications are alleged to be fraudulent and form the basis of the litigation, they *are sufficient* to support an exercise of jurisdiction. The use of interstate facilities, such as telephones and mail, are sufficient to provide the minimum contacts required by due process, where, as here, they relate to the causes of action. See Oriental Trading Co., 236 F.3d at 943 (citing Calder v. Jones, 465 U.S. 783, 789-90 (1984)); Finley v. River N. Records, Inc., 148 F.3d 913, 916 (8th Cir. 1998)). See also Amerada Hess Corp. v. Diamond Servs. Corp., 1995 U.S. App. LEXIS 30946, 1995 WL 631817 (10th Cir. Okla. Oct. 27, 1995).

This Court should align Missouri with the federal and state courts that have already determined that directing fraudulent communication into a state is sufficient to

satisfy the "minimum contacts" requirement of the due process clause.[4] To hold otherwise would grant out-of-state entities free license to defraud Missouri residents, through mailings, phone calls and email communications, with no risk of being called upon to answer for that conduct in the courts of this State. It would also force Missouri residents to bear the additional expense of litigating their claims in a foreign forum, should they seek redress for the wrongs done to them in Missouri. That outcome is not mandated by the due process clause, and should not be required by this Court. Indeed, this Court has recognized the interest of Missouri in providing redress in its own courts against persons who inflict injury upon Missouri citizens and extending the jurisdiction of its courts over nonresidents to the extent permissible under Due Process. State ex rel. Deere & Co. v. Pinnell, 454 S.W.2d 889, 891-92 (Mo. 1970). Moreover, Missouri has a strong interest in protecting its citizens from fraud committed in the state. See Simpson

[4] Missouri applies a five factor test to determine whether jurisdiction violates due process: (1) the nature and quality of contacts with Missouri; (2) the quantity of such contacts; (3) the relation of the cause of action to the contacts; (4) the interest of Missouri in providing a forum for its residents; and (5) the convenience of the parties. Watlow Elec. Mfg. Co. v. Sam Dick Indus., Inc., 734 S.W.2d 295, 297 (Mo.Ct.App. E.D. 1987). Under that test, directing fraudulent communications into the state should permit an exercise of jurisdiction, particularly where such communications are the basis of the lawsuit.

v. Dycon Intern., Inc., 618 S.W.2d 455, 457 (Mo.Ct.App. E.D. 1981) (finding "Missouri has a substantial interest in protecting its citizens from allegedly false advertising literature concerning a product sold in this state."). Accordingly, this Court should reverse the Opinion and find that Mr. Bryant's allegations that Respondents directed fraudulent communications to him in Missouri are sufficient to satisfy the "minimum contacts" requirement of the Due Process Clause.

II. The Court of Appeals Erred in Affirming Dismissal for Lack of Personal Jurisdiction Because the Amended Petition Alleges Facts Sufficient to Support an Exercise of Jurisdiction Under the Missouri Long-Arm Statute.

Mr. Bryant's lawsuit should not have been dismissed; the allegations of the amended petition are sufficient to satisfy not only the "minimum contacts" requirement, but also the Missouri long-arm statute. Missouri construes the long-arm statute liberally to enable courts to exercise their jurisdiction "to the full extent permitted by the due process clause" within the specific categories enumerated in the statute. State ex rel. Metal Serv. Ctr. of Georgia, Inc. v. Gaertner, 677 S.W.2d 325, 327 (Mo. banc 1984). Under Missouri's long-arm statute, the courts of this state can exercise jurisdiction over a non-resident defendant who has committed "a tortious act within this state," or transacted "any business within this state." RSMo. § 506.500.1(1), (3). The amended petition alleges that Respondents did both.

A. Respondents Committed a Tortious Act in Missouri.

The gravamen of Mr. Bryant's amended petition is that Respondents sent to him, in the state of Missouri, a series of misleading invoices that hid the true amount of the commissions they were charging him – *i.e.*, that Respondents defrauded him within the state of Missouri. The long-arm statute permits jurisdiction where the defendant commits a tortious act in Missouri. RSMo. § 506.500.1(3). Missouri courts construe the "commission of a tortious act" prong of the long-arm statute broadly so as not to deny jurisdiction in situations in which due process would permit it. State ex rel. Newport v. Wiesman, 627 S.W.2d 874, 876 (Mo. banc 1982); see also Institutional Mktg. Assocs., Ltd. v. Golden State Strawberries, Inc., 747 F.2d 448, 453 (8th Cir. 1984).

To satisfy the "commission of a tortious act" prong of the statute, Respondents need not be present in Missouri, as long as their extra-territorial acts have actionable consequences in the forum. Longshore v. Norville, 93 S.W.3d 746, 752 (Mo.Ct.App. E.D. 2002). "The tortious act section of Missouri's long arm statute includes extraterritorial acts that produce consequences in the state." Id. (citing Schwartz & Assocs. v. Elite Line, Inc., 751 F.Supp. 1366, 1369 (E.D. Mo. 1990)). Thus, "the commission of an extraterritorial tort with damage occurring in Missouri" is sufficient to permit jurisdiction under the statute. Longshore, 93 S.W.3d at 752. See also Golden State Strawberries, 747 F.2d at 453; Peabody Holding Co., Inc. v. Costain Group PLC,, 808 F. Supp. 1425, 1433 (E.D. Mo. 1992). Respondents' defrauding of Mr. Bryant

caused harm to him within the state. Thus, Respondents committed "a tortious act within this state," placing them within the reach of the long-arm statute.

B. Respondents Transacted Business in Missouri.

Respondents also "transacted business" in Missouri within the meaning of the long-arm statute. RSMo. § 506.500.1(1). Missouri courts construe the long-arm statute's "transaction of any business" provision broadly. State ex rel. Nixon v. Beer Nuts, Ltd., 29 S.W.3d 828, 834 (Mo.Ct.App. E.D. 2000). Indeed, even a single transaction will suffice where, as here, "the transaction is that upon which the plaintiff is suing." Id. Whether or not the non-resident defendant is authorized to conduct business in Missouri is immaterial. State ex rel. K-Mart Corp. v. Holliger, 986 S.W.2d 165, 168 (Mo. banc 1999). Similarly, there is no requirement that the defendant ever be physically present in the state. See Products Plus, Inc. v. Clean Green, Inc., 112 S.W.3d 120, 125 (Mo.Ct.App. S.D. 2003).

In this case, Respondents travelled into the state of Missouri to meet with Mr. Bryant and formalize their business relationship. Missouri courts have repeatedly held that a single business meeting in the state of Missouri is sufficient to satisfy the "transaction of business" provision of the long-arm statute. See, e.g., Watlow Electric., 734 S.W.2d at 297-98 ("[R]espondent sent its chief engineer to Missouri to finalize the design of the product. This single meeting is sufficient to satisfy the transaction of business requirement of Section 506.500."); Johnson Heater Corp., 86 S.W.3d at 119 ("For purposes of the statute, the 'transaction of any business' is construed broadly and

may consist of a single transaction if that transaction gives rise to the suit.").

Respondents also sent business correspondence to Mr. Bryant in Missouri. These actions are more than sufficient to satisfy the "transaction of business" prong of the long-arm statute. See, e.g., Mead v. Conn, 845 S.W.2d 109, 112 (Mo.Ct.App. W.D. 1993). Under controlling Missouri case law, the allegations of the amended petition satisfy not only one, but two, provisions of the long-arm statute. The Missouri courts have personal jurisdiction over Respondents.

CONCLUSION

For the foregoing reasons, Appellant Donald L. Bryant, Jr., requests that this Court reverse the judgment of the court of appeals and remand the case to the circuit court for further proceedings, and grant such other and further relief as the Court may deem proper.

Respectfully submitted,

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CERTIFICATION REQUIRED BY RULES 84.06(c) AND 84.06(g)

The undersigned hereby certifies that this Appellant's Substitute Brief complies with the limitations in Rule 84.06(b), and that it contains 3,932 words (exclusive of the cover, certificate of service, this certification, signature block and appendix) as counted by Microsoft Word 2003.

Appellant has filed an electric copy of the Substitute Brief with the Clerk on a CD-ROM, and certifies that the electronic copy has been scanned for viruses and that it is virus-free.

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CERTIFICATE OF SERVICE

I hereby certify that two copies of the foregoing Appellant's Substitute Brief and an electronic copy on CD-ROM have been served by Federal Express overnight delivery, this 18th day of September, 2009 to:

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APPENDIX